

Defense Support to Civil Authorities

A Monograph

by

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ABSTRACT

DEFENSE SUPPORT TO CIVIL AUTHORITIES by COLONEL Thomas J. Langowski, U.S. Army, 54 pages.

Defense Support to Civil Authorities (DSCA) in the post 9-11 era has received intense scrutiny with regard to the military's ability to effectively respond to natural or man-made disasters. The two party political nuances at the local, state, and federal levels, the media's amplification of any perceived failures, and statutory constraints, have forced the Department of Defense (DoD) to reexamine how it supports civil authorities when it is not the lead federal agency.

The federal government's slow and inadequate response to the seminal devastation created by Hurricane Katrina exposed weaknesses in the National Response Plan *and* DoD's contribution to that plan despite prior successes using the same plan. The response weaknesses are complex as they cut through three levels of government, transcend multiple federal and state agencies, and specifically for the military, cross between Title 10, Title 32, and state active duty forces, where the parent authorities of those forces are reluctant to share control for political, fiscal, and mission realities.

The ideas brought forth in this monograph are highly pertinent because frequency, scale, and the likelihood of a future natural or man-made disaster are high. The local, state, and federal response preparedness must exceed that which the nation witnessed during the aftermath of Hurricane Katrina. Defense leaders and planners, working with the interagency and the states, must prepare now for the next inevitable event in order to save lives, mitigate the breadth of property damage, and to maintain a high public trust.

Although this monograph uses the response to Hurricane Katrina as the basis for discussion, the significance of its findings apply, in general, to all DSCA incidents. Whether man-made (i.e., a terrorist bombing) or natural, the effects and consequences are similar in terms of casualties, infrastructure destruction, power outages, a displaced population, etc.

DoD should view DSCA as a core mission and, irrespective of the current military operational tempo, they must seasonally source forces, for planning purposes, to satisfy the most likely DSCA response. A sourced capability that is initially designed against pre-scripted capabilities to meet predicted response requirements will allow tasked units to prepare for a potential response. Other areas that the research concludes may require attention include how to command and control the National Guard, a different approach to when forces should deploy in a DSCA incident, and how military culture and the media affect DoD's ability to respond to a relief operation.

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I. INTRODUCTION

Defense Support to Civil Authorities (DSCA) in the post 9-11 era has received intense scrutiny with regard to the Department of Defense's (DoD) ability to effectively respond to natural or man-made disasters. The two party political nuances at the local, state, and federal levels, the media's amplification of any perceived failures, and statutory constraints have forced the Department of Defense (DoD) to reexamine how it supports civil authorities when it is not the lead federal agency.

The Homeland Security Act of 2002 designated the Department of Homeland Security (DHS) as the lead federal agency for domestic natural and man-made disaster response.¹ In response to a request from DHS's Federal Emergency Management Agency (FEMA), the President of the United States may approve military support under the Stafford Act.² In simplified terms, DHS has statutory authority as the lead federal agency to respond, but possesses very limited capabilities to do so. DoD has capabilities to effectively respond, but has limited to almost no authority to do so until formerly requested, and then only within the limits of what is specifically requested.³ This construct can potentially lead to a delayed response affecting DoD's ability to save lives and mitigate the scope of a disaster's consequences. The most recent example of a delayed response to a catastrophic disaster was the aftermath of Hurricane Katrina, when it took DoD five days to place significant federal military capability, beyond command and control assets, on the ground in Louisiana.⁴ The authority and budgetary construct during

¹ U.S. Congress, *Homeland Security Act of 2002* (Washington D.C.: GPO, 2002), 6 U.S.C. 101 – 1557.

² U.S. Congress, *The Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 93-288)* (Washington D.C.: GPO, 2003), 42 U.S.C. 5121 – 5206, ET SEQ.

³ Peter A. Topp, *What Should Be the Relationship between the National Guard and United States Northern Command in Civil Support Operations Following Catastrophic Events* (Monterey, CA: Naval Postgraduate School, 2006), 21.

⁴ Kathleen B. Blanco, Governor, State of Louisiana, *Response to U.S. Senate committee on Homeland Security and Governmental Affairs document and information request dated October 7, 2005 and to the House of Representatives select committee to investigate the (preparation for and the response to Hurricane Katrina* [Governor's response on-line] (*continued on next page*)

Hurricane Katrina did not allow DoD to perform as a “first responder” without usurping DHS’s role as the lead federal agency.

The scope of this monograph will examine DoD’s role across the spectrum of DSCA operations. However, because Hurricane Katrina was a seminal event, this monograph will focus on the lessons learned from Katrina’s response effort because it exposed weaknesses not seen in the 243 disaster responses since January 2001 and prior to Hurricane Katrina.⁵ Are there statutory constraints that inhibit DoD’s ability to effectively respond to a domestic disaster? Do Title 10 and Title 32 United States Code (U.S.C.) allow DoD to unify the military (active component and national guard) response in an effective manner? Do Title 10 and Title 32 forces need unity of command, or will unity of effort suffice? Does the Posse Comitatus Act inhibit Title 10 forces from effectively responding to a domestic disaster, and if so, should it be repealed? Are there DoD Policies that inhibit an effective response? Is DoD (Joint Director of Military Support (JDOMS), U.S. Northern Command (USNORTHCOM), and Defense Coordinating Officers (DCO)) organized to effectively coordinate on an interagency staff to effectively respond in crisis? Finally, does DoD employ effective Information Operations to baseline and manage the public’s expectations?

A. RESEARCH QUESTION

Should DoD regard DSCA operations as a core mission⁶ and deliberately source, prepare, and train for the high likelihood of responding to a DSCA operation, thus providing a designed relief capability, vice an ad-hoc capability, in response to a catastrophic domestic incident?

(Baton Rouge, LA: 2 December 2005, accessed 14 November 2007); available from <http://www.gov.state.la.us/index.cfm?md=newsroom&tmp=detail&articleID-1523&>; Internet.

⁵The White House, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington D.C.: February 2006), 50.

⁶ DSCA is an acknowledged mission in FM 3.0 but it currently is a low priority mission that only receives attention with regard to sourcing when a crisis is looming. The use of core mission connotes that it is considered for sourcing, training, and planning similar to GWOT sourcing.

B. WORKING HYPOTHESIS

DoD should view DSCA as a core mission and, irrespective of the current military operational tempo (OPTEMPO), must seasonally source forces, for *planning purposes*, to satisfy the most likely DSCA response requirements.⁷ A sourced capability that is initially designed against pre-scripted capabilities to meet predicted response requirements will allow tasked units to plan and prepare for a potential response. Further, DoD should pursue a joint active and National Guard response that focuses on unity of effort, rather than unity of command. Trying to designate the National Guard as the sole military responder, as one independent research company has recommended, has merit, but lacks the effectiveness that the entire military (active and reserve component) can bring to bear.⁸

When DoD is not constrained by resources or statutory authorities they can effectively respond to any natural disaster consequence management mission. However, in the current response model, DoD is on a very short and tight leash with regard to authorities and resourcing, and as a result, they cannot perform to their full potential when called to respond. To meet society's expectations, the response model must change to include DoD on the full spectrum of interagency response from the beginning. The model must also address statutes that hinder timely response without usurping the lead federal agency's role and responsibility, or hinder DoD's primary mission of defending our nation.

C. SIGNIFICANCE OF RESEARCH

The federal government's slow and inadequate response to the devastation created by Hurricane Katrina exposed weaknesses in the National Response Plan, *and* DoD's contribution to

⁷ Seasonally source refers to the periods of time that a specific disaster threat may demand the sourcing of a specific capability (e.g., hurricane season runs from June 1st through November 30th).

⁸Lynn E. Davis and others, *Hurricane Katrina: Lessons for Army Planning and Operations* (Santa Monica, CA: RAND), 2007.

that plan, despite their prior successes.⁹ These weaknesses are complex as they cut through three levels of government; transcend multiple federal and state agencies; and specifically for the military, cross between Title 10, Title 32, and state active duty forces where the parent authorities of those forces are reluctant to share control for political, fiscal, and mission realities.

The likelihood of a future natural or man-made disaster is high. The local, state, and federal response preparedness must exceed that which the nation witnessed during aftermath of Hurricane Katrina. Defense leaders and planners, working with the interagency and the states, must prepare now for the next inevitable event in order to save lives, mitigate the breadth of property damage, and to maintain a high public trust – a public trust that comes from a people who do not understand, nor care about, the bureaucratic nature of a national disaster response.

Although this monograph uses the response to Hurricane Katrina as its basis for discussion, the significance of its findings apply to the breadth of a consequence management response. Whether man-made (i.e., a terrorist bombing) or natural, the effects or consequences are similar (casualties, infrastructure destruction, power outages, a displaced populations, etc).

D. LITERATURE REVIEW

To answer the research question the author set out to determine if DoD is a necessary capability of choice. Concluding that DoD is a necessary and enduring capability of choice then the author examined the DSCA processes and identified improvements and recommended changes. As USNORTHCOM is relatively new, the evidence to answer the research question came from contemporary sources (journal articles, Congressional testimony, White House investigations, and interviews with officers in position to influence DSCA operations) and then put into a legal and policy context which is historically well established.

⁹ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington D.C.: February 2006), 50. The tactics, techniques, and procedures that were successfully employed for the previous 243 major disaster declarations proved inadequate for Hurricane Katrina.

Although there is not a surplus of literature specifically covering DSCA operations there is a significant amount of research that addresses the germane issues uncovered in the aftermath of Hurricane Katrina. Congressional testimony, reports to Congress, and government after-action reviews highlight statutory constraints that may inhibit DoD's ability to effectively respond to domestic disasters. They underscore DoD's roles (Joint Director of Military Support (JDOMS), U.S. Northern Command (USNORTHCOM), and Defense Coordinating Officers (DCO)) and how they are organized to coordinate within an interagency staff to effectively respond to a catastrophe.

The RAND Corporation presented a monograph, *Hurricane Katrina: Lessons for Army Planning and Operations*, which focused on the role of the National Guard in DSCA operations.¹⁰ The report recommended a complete reorganization of the National Guard with respect to roles and missions and would require statutory approval at both the federal and state levels. The RAND monograph is provocative and well documented as it addresses the Title 10 and Title 32 issues, but it is debatable in a cost benefit analysis, as well as, arguable in effectiveness and efficiency for a mission that is episodically executed.

The *National Strategy for Homeland Security*, *Strategy for Homeland Defense and Civil Support*, and the *National Response Plan* (NRP) communicate processes, roles and responsibilities for consequence management operations. Inherently bureaucratic, these national strategies, policies, and processes define how the government should react in a disaster response. From this baseline of information, local, state, and federal leaders can have a deliberate discussion of what is right or wrong with current DSCA operations.

Finally, in a 24-hour news-cycle-world, the management of information can potentially lead observers to draw conclusions that do not represent reality. There is not much literature that

¹⁰ Lynn E. Davis, *Hurricane Katrina: Lessons for Army Planning and Operations* (Santa Monica, CA: RAND), 2007.

ties information management and DSCA operations together, but as DoD has learned during the last six years, Information Operations (IO) is an enabler if used effectively. A review of literature (field manuals) addressing IO in full spectrum operations was extrapolated and framed for use in DSCA operations.

E. TENTATIVE SOLUTIONS

The following criteria were used before recommending a solution or change to DSCA operations: Does the recommendation violate any statute? If yes, is it worthwhile to pursue legislative change? Does the recommendation improve the federal interagency response to disaster relief? Does it improve the local and state response to the disaster? Does it efficiently and effectively apply DoD and National Guard assets to the relief effort? If not, does the benefit make the low efficiency or low effectiveness a mute point? Finally, duration of time between requested support and provided relief is applied as the primary measure of effectiveness in order to gauge the degree of improvement in these categories.

The first recommendation is to force Joint Forces Command (JFCOM) to seasonally source forces for planning purposes. DoD's operational tempo (OPTEMPO) during the last six years has created a resistance to sourcing any mission that is not a Category I or II requirement, such as rotational forces supporting Operations Enduring and Iraqi Freedom. DSCA missions, prior to an actual disaster, fall into a Category IV priority which does not allow advanced notification to units that would deploy into a DSCA relief operation.¹¹ This recommendation does not advocate assigning forces to USNORTHCOM, nor does it require a mission rehearsal prior to the time period of potential execution. The sourcing notification is for planning and advanced coordination in order to shorten that critical response gap after notification.

¹¹ U.S. Department of the Army, *Forces Command, G3 Plans*, Advanced Operation Arts Studies Fellowship field work briefing on the record (confirmed by e-mail, February 11, 2208), December 5, 2007.

The second recommendation is to simply end the debate over the use of Title 10 and Title 32 forces, and for DoD and states to accept the fact that there will be two military chains-of-command in a DSCA operation. Even if the military forces (active and National Guard) were unified under one military structure, the coordinating authority for the entire effort is still the responsibility of the Principal Field Officer (PFO) from DHS. The PFO is responsible for the unity of effort, not DoD. The PFO is responsible to ensure that the use of state capabilities (Title 32 National Guard forces) is exhausted prior to using federal capabilities, not DoD. In fact, if the relief operation is executed in accordance with the NRP, it is more advantageous to have both Title 10 and Title 32 forces available as it allows the state to use Title 32 forces in a law enforcement capacity. Also, trying to designate the National Guard as the sole Homeland Security/Homeland Defense force sub-optimizes the full military capability that can respond to a DSCA operation.

The third recommendation is to allow DoD to deploy more than command and control forces *prior* to a predicted natural disaster, in order to shape the conditions for a response. USNORTHCOM has analyzed 15 separate disaster scenarios and has created a package of 26 pre-scripted mission assignments (PSMA).¹² However, these PSMA's are designed to assist DHS and state authorities to better request military capabilities *after* the disaster has struck. This recommendation would allow USNORTHCOM to lean forward by allowing them to deploy limited search and rescue, medical, or transportation capabilities based on analysis of the predicted consequences of the disaster. This recommendation may require changes to the Stafford Act, but the benefits of shaping a DoD response warrant the pursuit of any required legislative change.

¹² U.S. Department of Defense, Joint Director of Military Support (JDOMS), *Memorandum: Pre-scripted Mission Assignments (Rounds 1 and 2) with Adjusted Cost Factors* (Washington D.C., 1 November 2006).

The fourth recommendation is a cultural shift from “being in charge” to one of supporting. The military has created a culture of leaders who are trained to take charge and win the nation’s wars; a mission where DoD is the lead federal agency. In DSCA operations, DoD is not only in a supporting role, but is a resource of last resort. To set the conditions for a successful federal response the local and state authorities must succeed. In other words, it is all about the local and state response. If the population loses confidence in their local and state authorities, the federal response will create tension, competition, and an uncoordinated effort. DoD should avoid designating a Joint Task Force Commander that out-ranks the state’s Adjutant General.¹³ DoD should also avoid becoming the “face” of the federal response. DoD should simply, and transparently support the local and state relief effort and exit the response area after local and state capabilities are no longer overwhelmed.¹⁴

The final recommendation is to add two planning considerations for DoD to incorporate into DSCA operations: politics and information operations. Military culture is an apolitical institution that serves the people through a constitutional chain-of-command. However, DSCA operations are complex in that they transcend and affect three levels of government (local, state, and federal) and the population affected by the disaster. Despite the military’s apolitical nature, their actions alone are potentially perceived differently (positively or negatively) at each level of government. The reality is, in order to preserve the apolitical character of the military response, the military must consider the ramifications that their actions, or inactions may have on the political dynamics of a relief operation that cuts through three layers of government.¹⁵

Incorporating the fourth recommendation, planners should begin by integrating an information

¹³ The State TAG (The Adjutant General) is normally a Major General.

¹⁴ William G. Webster Jr., Lieutenant General, U.S. Army, interview by author, 18 September 2007, Fort Leavenworth, KS. LTG Webster was serving as the Deputy Commanding General of U.S. Northern Command at the time of the interview.

¹⁵ Ibid.

operations plan that aims to support the local and state response efforts and make them the face of the relief effort.

F. PAPER ORGANIZATION

To provide the reader a framework and an appreciation for the dynamic nature of a disaster relief operation, Chapter II exposes some perceptions, realities, and political nuances of a full blown DSCA operation. Chapter III provides a basis to examine the complex problem of responding to a significant disaster by analyzing some key constraints that affect the DoD. Chapter IV outlines the process used by all levels of government to ensure appropriate relief capability is used effectively and efficiently. Chapter V examines the very contentious duality of the active military and Title 32 National Guard in a DSCA operation. Chapter VI evaluates what can be done to shorten the military response gap once a capability is requested. Chapter VII introduces the idea that DoD's culture may in fact inhibit an effective DSCA response. Chapter VIII provides a summary of each chapter's conclusions and proposes a way ahead.

II. PERCEPTIONS, REALITIES AND POLITICS

USNORTHCOM met every request for support received from FEMA. In support of the relief effort, Department of Defense forces conducted search and rescue operations, assisted with evacuations, organized a complex logistical system to deliver food, water, and other essential supplies, provided medical care, provided imagery support, conducted fire fighting and mosquito abatement missions, cleared debris, safely managed crowded airspace and assisted with mortuary affairs.¹⁶

- Admiral Timothy Keating, USN, Commander, United States Northern Command, October 27, 2005

A. PERCEPTION AND REALITIES

On the battlefields of Vietnam, the U.S. Army was unbeatable. In virtually every encounter, the forces of the Viet Cong and of the North Vietnamese Army were decisively beaten. Yet, in the end, North Vietnam emerged victorious. “How could we have succeeded so well, yet failed so miserably?”¹⁷ The federal response to Hurricane Katrina in 2005 is tainted by this same archetype, a lot of independent DoD victories within an interrelated and overarching federal failure.

On August 27, 2005, President Bush declared a state of emergency in Louisiana; on August 28, 2005, a Defense Coordinating Officer (DCO) was deployed to begin organizing the federal military response; and on August 29, 2005, Hurricane Katrina made landfall. By September 1, 2005, nearly 3,000 active duty personnel were deployed into the disaster area conducting DoD medical airlift operations with another 11,000 federal soldiers from the 82nd Airborne and 1st Cavalry Divisions due to arrive within four days. “LTG Honoré’s leadership, combined with DoD’s resources, manpower, and advanced planning, contributed to the military’s

¹⁶ U.S. House of Representative, *Hurricane Katrina Preparedness and Response by the Department of Defense, the Coast Guard, and the National Guard of Louisiana, Mississippi, and Alabama* (Washington, D.C.: U.S. House of Representatives, Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, 2005, accessed 4 January 2008); available at <http://purl.access.gpo.gov/GPO/LPS67245>; Internet.

¹⁷ Harry G. Summers, JR., *On Strategy*, (Novato, CA: Presidio Press, 1982), 21-22.

success in the [f]ederal response, especially in areas such as rescue, security, and logistical support.”¹⁸

An interagency (DHS, Department of Transportation, and DoD) airlift evacuated over 24,000 people affected by Hurricane Katrina. This effort constituted the largest domestic civilian airlift on U.S. soil in history.¹⁹ Simultaneously, DoD was executing a major medical airlift, search and rescue operations, and other logistics related tasks that supported the local, state, and federal response.

These examples of DoD successes, and many others, however, were not enough to overcome perceptions of an overall government response failure. It became conventional wisdom among print media that the federal response was “unconscionably slow.”²⁰ Jack Kelly, a national security writer for the *Pittsburgh Post-Gazette* wrote the following contrast of perception in a September 11, 2005 article entitled “No Shame:”

“Mr. Bush’s performance last week will rank as one of the worst ever during a dire emergency,” wrote New York Times columnist Bob Herbert in a somewhat more strident expression of conventional wisdom.

But the conventional wisdom is the opposite of the truth.

Jason Van Steenwyk is a Florida National Guardsman who has mobilized six times for hurricane relief. He notes that: “The federal government pretty much met the standard timelines, but the volume of support provided during the 72-96 hour was unprecedented. The federal response here was faster than Hugo, faster than Andrew, faster than Iniki, faster than Francine and Jeanne.”²¹

The scale of the Hurricane Katrina disaster exaggerated the federal military’s perceived inability to respond adequately to the fast emerging requirements. The tactics, techniques, and procedures that were successfully employed for the previous 243 major disaster declarations proved

¹⁸ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington D.C.: February 2006), 43. This is a White House quote that provides one perspective on the adequacy of the Federal military’s response. It provides one side of the crux of the problem: are our federal response procedures, with regard to the military, adequate, or is a change in statute(s) or expectations needed?

¹⁹ Ibid, 40.

²⁰ Jack Kelly, *No Shame*, [newspaper article on-line] (“Pittsburgh Post-Gazette,” 11 September 2005, accessed 12 December 2007); available from <http://www.post-gazette.com/pg/05254/568876.stm>; Internet.

²¹ Ibid.

inadequate for a disaster of Hurricane Katrina's magnitude.²² "The response to Hurricane Katrina fell far short of the seamless, coordinated effort that had been envisioned by President Bush when he ordered the creation of the National Response Plan in February 2003."²³

The fact is, a natural disaster response is a local and state government responsibility. Statutorily, only when local and state capabilities are exhausted (or when anticipated to exceed their capabilities) can the federal government respond. Within the federal response structure, DoD is the department of last resort when taking federal action in a disaster such as Katrina, or any other tragedy where DoD is not the lead federal agency. Or as USNORTHCOM's Deputy Commanding General puts it, "Just because DoD has the capabilities and capacities that may be greater or nearer than some of our civilian partners may have handy, it does not mean that we can simply launch. DoD is a responder of last resort in our homeland, by law. That is what we did for Katrina."²⁴

The Homeland Security Act of 2002 designated the Department of Homeland Security (DHS) as the lead federal agency for domestic natural and man-made disaster response.²⁵ In response to a request from DHS's Federal Emergency Management Agency (FEMA), the President, through the Secretary of Defense (SECDEF), may approve military support under the Stafford Act.²⁶ In simplified terms, DHS has statutory authority as the lead federal agency to respond, but possesses very limited capabilities to do so. DoD has capabilities to effectively

²² The White House, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington D.C.: February 2006), 50.

²³ Ibid, 3.

²⁴ William G. Webster Jr., Lieutenant General, U.S. Army, interview by author, 18 September 2007, Fort Leavenworth, KS.

²⁵ U.S. Congress, *Homeland Security Act of 2002* (Washington D.C.:GPO, 2002), 6 U.S.C. 101 – 1557.

²⁶ U.S. Congress, *The Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 93-288)* (Washington D.C.: GPO, 2003), 42 U.S.C. 5121 – 5206, ET SEQ. Refer to Chapter III of this monograph for further discussion on the Stafford Act.

respond, but has limited to almost no authority to do so until formerly requested, and then only within the limits of what is specifically requested.

Under the Stafford Act, such a request puts the burden of funding on the requesting agency (DHS/FEMA in most cases). As a result, budget-conscious agencies will only bring in DoD as a last resort, never as a first responder, when there is time to shape and set conditions for success. A significant Hurricane Katrina lesson learned was that, “Limitations under Federal law and DoD policy caused the active duty military to be dependent on requests for assistance. These limitations resulted in a slowed application of DoD resources during the initial response.”²⁷ This condition, therefore contributes to the perception that the military is neither taking initiative nor doing enough in a crisis.

One final observation on public perception of a disaster response is the misperception that all uniformed military personnel are part of the DoD, or the federal response. The National Guard is a state asset whose chain-of-command ends with the state governor.²⁸ The “military response” (both active and National Guard) is not necessarily coordinated, nor is there necessarily a unifying military command structure or effort. Unless the President of the United States federalizes the National Guard there will be two distinct chain-of-commands operating in a DSCA operation. “The fact that the National Guard may act under state control or may be federalized and brought under the command of active duty forces at the President’s discretion creates a decision-point with political, cost, and coordination/command implications.”²⁹

²⁷ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington D.C.: February 2006), 54.

²⁸ Steve Bowman and others, *Hurricane Katrina DoD Disaster Response*, CRS report for Congress, RL33095 (Washington, D.C.: Congressional Research Service, Library of Congress, 2005), 10.

²⁹ Ibid, summary page.

B. POLITICS

Relief from the consequences of natural or man-made disasters is first and foremost a state obligation. Under the Constitution, states are responsible for the protection of their citizens' lives and property. All requests for assistance begin at the local level and flow up as resources and capabilities are exceeded at each level of government. States can request assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act, 42 U.S.C §§ 1521), provided that the governor of the affected state requests federal assistance after determining that his or her state lacks sufficient capabilities and resources to adequately respond to the disaster. In addition, the governor must execute the state's emergency plan (e.g., calling up the state National Guard) prior to the request for federal assistance.³⁰

On August 28, 2005, Louisiana Governor Kathleen Blanco requested a federal emergency declaration and President Bush signed it that same day making federal relief available to the state in accordance with the National Response Plan (NRP). On August 29, 2005, Governor Blanco again spoke with President Bush, she told him, "We need everything you've got." On August 30, 2005, Blanco instructed her Adjutant General, Major General Bennett Landreneau, to ask for all available federal military assistance. On August 31, 2005, Governor Blanco told President Bush that she estimated 40,000 troops were needed. On September 2, 2005, the Governor specifically requested a fleet of military vehicles and at least 175 generators, medical supplies including personnel, equipment, drugs and vaccines, and assistance with mortuary affairs.³¹

³⁰ Keith Bea, *Federal Stafford Act Disaster Assistance Presidential Declarations, Eligible Activities, and Funding* CRS Report to Congress, RL33053 (Washington, D.C.: Congressional Research Service, Library of Congress, 2005), 1-10.

³¹ Kathleen B. Blanco, Governor, State of Louisiana, *Response to U.S. Senate committee on Homeland Security and Governmental Affairs document and information request dated October 7, 2005 and to the House of Representatives select committee to investigate the preparation for and the response to Hurricane Katrina* [Governor's response on-line] (Baton Rouge, LA: 2 (continued on next page)

Though it is not required to specify requirements in a disaster, if a governor is going to work outside the established procedures outlined in the NRP then they must do so with specifics. The procedures in the NRP (outlined in Chapter IV of this monograph) are designed to methodically establish disaster relief requirements and assign responsibility for satisfying those needs by a federal agency when the state lacks the appropriate resources and capabilities. When the process (albeit bureaucratic) is circumvented, and there is disunity of effort, the conditions are set for an unorganized solution to in fact exasperate the crisis.

On September 2, 2005, New Orleans Mayor Ray Nagin gave an impassioned interview on Radio 870 WWL-AM where he expressed confusion and frustration with the federal response four days after Katrina made landfall. He stated that looters in the city were out of control because all of the resources available to him were devoted to life-saving tasks. He was irritated that the federal government was seemingly not assisting and when asked whether or not his state governor had requested federal assistance, he had no knowledge of what the state was requesting. When asked what his city needed, he could not state clearly what the requirements were, "I need everything. I need reinforcements, troops, and 500 buses. This is a major, major, major deal."³² This interview highlighted the lack of communication between the local and state governments, as well as a lack of understanding on the part of Mayor Nagin of how the National Response Plan is executed.

B. SUMMARY

When government response does not achieve minimal public expectations, conditions are set for politicians to blame other politicians and other levels of government. Irrespective of the

December 2005, accessed 14 November 2007); available from <http://www.gov.state.la.us/index.cfm?md=newsroom&tmp=detail&articleID-1523&>; Internet.

³² Ray Nagin, Mayor, City of New Orleans, LA [on-line interview by Radio WWL - AM870 with Radio's Garland Robinette] (New Orleans, LA: 2 September 2005, accessed 15 December 2007); available from <http://www.cnn.com/video/#/video/us/2005/09/02/wwl.nagin.intv.affl>; Internet.

disaster response bureaucracy and the inevitable chaos, DoD is charged with supporting the response effort when directed by the President and must do so in a transparent way that allows the local and state governments to succeed.

This response perspective is a departure from a military culture that rewards strong and visible leadership; a leadership that historically serves as a rallying and unifying characteristic in times of crisis and chaos. When asked by the radio interviewer what the President had done so far, Mayor Nagin referenced Lieutenant General Russell Honoré, Joint Task Force – Katrina’s Commanding General by saying, “He sent one of those John Wayne dudes, he is getting stuff done, give him full authority.”³³ DoD is a *supporting* effort in DSCA relief operations, but if they are *perceived* as the main effort, then the local and state response will lose focus.

³³ Ibid.

III. CONSTRAINTS AND AUTHORITIES

Unlike the old Cavalry from here at Fort Leavenworth, USNORTHCOM simply may not saddle up and dash to the fire...or the hurricane. We can saddle up and lean forward, but we may not deploy until properly requested under the law and according to proper interagency procedures ...and then as directed by the Secretary of Defense.³⁴

- Lieutenant General William G. Webster Jr., September 18, 2007

Army planning doctrine defines constraints as restrictions placed on a command that dictates an action or inaction.³⁵ Constraints at the DoD and Combatant Command (COCOM) levels are normally based in law and authority, and enforced by funding control. Laws governing how the military can execute operations domestically are grounded in the Posse Comitatus and the Insurrection Acts. Authorities governing DoD's role in disaster response arise from Presidential Directives, the Stafford Act, the Homeland Security Act, and the National Response Plan. Funding control, which expresses authority indirectly, is governed by the Stafford and Economy Acts in a disaster relief operation. All of these statutes, directives, and funding authorities have shaped policy and are translated into what circumstances, when, and how DoD can respond in a disaster relief.

A. THE POSSE COMITATUS ACT (18 U.S.C. § 1385)

Primarily supported by southern democrats, the Posse Comitatus Act (PCA) was signed by President Hays on June 18, 1878. "There can be little doubt that the Posse Comitatus Act was a direct result of the Army's involvement in Reconstruction and the military's involvement in Grant's campaign against the Klan. In fact, the act was almost certainly intended as one last

³⁴ William G. Webster Jr., Lieutenant General, U.S. Army, interview by author, 18 September 2007, Fort Leavenworth, KS.

³⁵ U.S. Department of The Army, *FM 5-0, Army Planning and Orders Production* (Washington, D.C.: G.P.O., 2005), Glossary-5.

bulwark against federal meddling in the internal affairs of the white supremacist South.”³⁶

Regardless of its arguable racist origin the PCA’s guiding principle has shaped how the DoD responds to DSCA operations today – the military is not a domestic police force unless authorized by the Constitution or an Act of Congress.

The salient point of the PCA, as it applies to DoD in a DSCA operation, is that the Army and Air Force may not be used in a law enforcement role. DoD policy extends that prohibition to the Navy and the Marines which effectively prevents all Title 10 forces from performing law enforcement activities while in support of civil authorities.³⁷ The National Guard, when in a state-status (to include Title 32), is not covered by the PCA and may be used in a law enforcement role if permitted to do so by the state constitution and the governor.³⁸ According to the Cato Institute (an established libertarian think tank):

The Posse Comitatus Act is no barrier to federal troops providing logistical support during natural disasters. Nor does it prohibit the president from using the army to restore order in extraordinary circumstances-even over the objection of a state governor. What it does is set a high bar for the use of federal troops in a policing role. That reflects America’s traditional distrust of using standing armies to enforce order at home, a distrust that’s well-justified.³⁹

This distinction between Title 10 and state-status forces (inclusive of Title 32) is a key subtlety that is discussed further in Chapter V when a positive case is made for a dual Title 10 and Title 32 response to a disaster relief operation.

³⁶ Matt Mathews, *The Posse Comitatus Act and the United States Army A Historical Perspective*, Global war on terrorism occasional paper, 14 (Fort Leavenworth, Kan: Combat Studies Institute Press, 2006), 33.

³⁷ U.S. Congress, *Title 14, United States Code: Coast Guard* (Washington D.C.: U.S. G.P.O., 1973). The U.S. Coast Guard, has inherent law enforcement capabilities.

³⁸ Jennifer Elsea, *The Use of Federal Troops for Disaster Assistance: Legal Issues*, CRS report for Congress, RS22266 (Washington, D.C.: Congressional Research Service, Library of Congress, 6 June 2005), 4.

³⁹ Gene Healy, *Domestic Militarization: A Disaster in the Making* [article on-line] (CATO Institute, 27 September 2005, accessed 12 December 2007); available from http://www.cato.org/pub_display.php?pub_id=5074; Internet.

The only exceptions to the PCA are the Insurrection Act and the Immediate Response Authority to prevent the loss of life or property during serious disturbances or calamities, and to protect federal property and governmental functions.

B. ENFORCEMENT OF THE LAWS TO RESTORE PUBLIC ORDER (THE INSURRECTION ACT 10 U.S.C. §§ 331-335)⁴⁰

The Insurrection Act of 1807, as amended by P.L. 109-364 in FY 2007, authorizes the President of the United States to employ federal troops to “restore public order and enforce the laws of the United States,” in the event that state authorities are unable to maintain public order. Prior to the amendment, the President could only deploy troops if the public disorder was the result of lawlessness, insurrection, rebellion, or conspiracy. As amended, the President can deploy troops as a police force if the disorder is created by a natural disaster, epidemic, serious public health emergency, or terrorist attack, but only after he determines that maintaining public order is beyond the state’s capability. Further, the President can authorize the deployment of federal troops to restore public order without state consent, however, he is required to notify Congress as soon as practicable and every 14 days until normal law enforcement is restored.⁴¹

C. IMMEDIATE RESPONSE AUTHORITY

DoD has also worked under the Immediate Response Authority.⁴² This authority allows a local DoD commander to respond to emergency situations to provide assistance to local

⁴⁰ The Defense Authorization bill for FY2007 (P.L. 109-364) retitled chapter 15 of title 10 from “Insurrection” to “Enforcement of the Laws to Restore Public Order.”

⁴¹ Jennifer Elsea, *The Use of Federal Troops for Disaster Assistance: Legal Issues*, CRS report for Congress, RS22266 (Washington, D.C.: Congressional Research Service, Library of Congress, 6 June 2005), 3.

⁴² Ibid. There are no statutes or constitutional basis that authorize the President or local commander to act under this authority. Historical precedent, and because Immediate Response actions are based in the common law principle of necessity, are the two most commonly cited rationales to support the use of this Authority. Both rationales have been upheld by the Supreme Court.

authorities when there is no time to get prior approval. DoD Directive 3025.1 states that commanders are authorized to exercise Immediate Response Authority when:

Imminently serious conditions resulting from any civil emergency or attack may require immediate action by military commanders, or by responsible officials of other DoD Agencies, to save lives, prevent human suffering, or mitigate great property damage. When such conditions exist and time does not permit prior approval from higher headquarters, local military commanders and responsible officials of other DoD Components are authorized by this Directive, subject to any supplemental direction that may be provided by their DoD Component, to take necessary action to respond to requests of civil authorities. All such necessary action is referred to in this Directive as "Immediate Response."⁴³

This authority is also the one exception for DoD to respond to a disaster outside the authority of the Stafford Act.

D. THE ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT (THE STAFFORD ACT, 42 U.S.C. §§ 5121, ET SEQ.)

The Stafford Act of 1988 is the cornerstone authority for how and when local and state authorities can solicit federal assistance in an emergency, and it is the authoritative statute that allows the DoD to assist in a domestic civil operation. While this authority is not an exception to the PCA or the Insurrection Act, it does provide specific guidelines for the employment of DoD forces in a DSCA operation. According to a Congressional Research Service (CRS) report to Congress, submitted in 2007, permitted operations under the Stafford Act include:

Debris removal and road clearance, search and rescue, emergency medical care and shelter, provision of food, water, and other essential needs, dissemination of public information and assistance regarding health and safety measures, and the provision of technical advice to state and local governments on management and control. Patrolling in civilian neighborhoods for the purpose of providing security from looting and other activities, would not be permissible, although patrolling for humanitarian relief missions, such as rescue operations and food

⁴³ U.S. Department of Defense, *DoD Directive 3025.1, Military Support to Civil Authorities (MSCA)* (Washington, D.C.: G.P.O., 1993), paragraph 4.5.1.

delivery (which have the incidental benefit of deterring crime) would not violate the PCA.⁴⁴

These specified tasks of how the U.S. armed forces can be employed in a disaster relief operation, however, pertain only to Title 10 forces. State National Guard forces in a state-active or Title 32 status are not subject to the same limitations.

Two armed soldiers, one Title 10 the other Title 32, can potentially work in the same area where one has the task to deter looting (Title 32) while the other (Title 10) is delivering food, and both are completely legal.⁴⁵ This reality, however, can cause a perceived conflict in the application of military forces in a DSCA operation, one that the state and federal authorities need to consider when coordinating relief operations.

To trigger the Stafford Act, the Governor must exceed his or her relief capabilities, the state's emergency plan must be in effect, and then the President can be asked to declare an emergency or major disaster. The President can then authorize DoD to provide emergency essential services absent a formal declaration for up to 10 days.⁴⁶ According to Commander Jim Winthrop in the 1997 *Army Lawyer*, "The intent of Congress in passing this legislation was to provide "gap-filler" authority in those cases where the emergency was so severe that immediate DoD involvement was necessary prior to the completion of the Presidential declaration process. This "emergency work" authority only lasts for ten days and also requires a request for such resources from the governor of the affected state. This authority is rarely employed."⁴⁷

⁴⁴ Jennifer Elsea, *The Use of Federal Troops for Disaster Assistance: Legal Issues*, CRS report for Congress, RS22266 (Washington, D.C.: Congressional Research Service, Library of Congress, 6 June 2005), 5.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Jim Winthrop, *The Oklahoma City Bombing: Immediate Response Authority and Other Military Assistance to Civil Authority (MACA)* [on-line pamphlet], The Army Lawyer (Charlottesville, VA: Judge Advocate General's School, 1997, accessed 14 December 2007), 5; available from http://www.loc.gov/rr/frd/Military_Law/pdf/07-1997.pdf; Internet.

E. HOMELAND SECURITY ACT OF 2002 (6 U.S.C. §§ 101, ET SEQ.)

The Homeland Security Act (HSA) of 2002 reorganized the Federal Emergency Management Agency (FEMA) under the Department of Homeland Security (DHS). In section 507, the functions and authorities as written in the Stafford Act remained with FEMA and they were further tasked “with carrying out its mission to reduce the loss of life and property and protect the nation from all hazards by leading and supporting the nation in a comprehensive, risk-based emergency management program.” FEMA, now through DHS, remains the lead agency for the Federal Response Plan.⁴⁸

F. HOMELAND SECURITY PRESIDENTIAL DIRECTIVE/HSPD-5

There are two policy statements in this directive that planners should understand when they begin discussing lines of authority or chains-of-command for Title 10 and 32 forces engaged in DSCA operations. The first is that the “Secretary of Homeland Security is the principal federal official for domestic incident management. Pursuant to the Homeland Security Act of 2002, the Secretary is responsible for coordinating federal operations within the United States to prepare for, [to] respond to, and recover from terrorist attacks, major disasters, and other emergencies.” The Secretary will coordinate this response when local and state resources are overwhelmed and federal assistance is requested by the proper state authority.⁴⁹

The second policy statement is that, “The Secretary of Defense shall provide military support to civil authorities for domestic incidents as directed by the President or when consistent

⁴⁸ U.S. Congress, *Homeland Security Act of 2002* (Washington D.C.: GPO, 2002), 6 U.S.C. 101 – 1557.

⁴⁹ George W. Bush, President of the United States, *Homeland Security Presidential Directive/HSPD-8 Management of Domestic Incidents* [Directive on-line] (Washington, D.C.: White House Office of the Press Secretary, 2003, accessed 14 November 2007); available from <http://www.whitehouse.gov/news/releases/2003/02/20030228-9.html>; Internet.

with military readiness and appropriate under the circumstances and the law. The Secretary of Defense shall retain command of military forces⁵⁰ providing civil support.”⁵¹

From these two policy statements emerge several disaster response principles that sprinkle reality onto a complex response effort. One, DoD is not in charge of disaster relief operations. Two, local and state authorities must exhaust their own capabilities first, and then request federal assistance. Three, pursuant to the previous principle, the Governor is very unlikely to yield authority over his or her National Guard forces to the DoD. Four, Title 10 forces will always work for the SECDEF. Five, the Secretary of Homeland Security, working with local and state authorities, is the sole official responsible for unity of effort – a unity of effort that cuts through three levels of government. This last principle is important in the Title 10 and state-active duty (inclusive of Title 32) discussion because there are advocates for federalizing National Guard forces who think this is imperative in order to achieve unity of effort – it is not. In fact, doing so may actually usurp the authority of the Secretary of Homeland Security who is responsible for unity of effort as described in the directive.

F. FUNDING

The primary funding mechanism for DoD DSCA operations is the Stafford Act. In accordance with the Stafford Act, DoD is reimbursed for services and supplies provided and used during relief operations by the lead federal agency. The nuance in this reimbursement language is that it does not include wages or salaries of military personnel involved in the DSCA operation (this is a “sunk” cost). However, this cost is not “sunk” when the state National Guard is called to active duty under Title 32. In this case, DoD must pay the salaries of activated Guardsmen

⁵⁰ The reference to military forces in this statements refers only to federal (or federalized) military forces pursuant Title 10 U.S.C.

⁵¹ George W. Bush, President of the United States, *Homeland Security Presidential Directive/HSPD-8 Management of Domestic Incidents* [Directive on-line] (Washington, D.C.: White House Office of the Press Secretary, 2003, accessed 14 November 2007); available from <http://www.whitehouse.gov/news/releases/2003/02/20030228-9.html>; Internet.

even while they remain under state authority. DoD did not anticipate that cost, nor are they reimbursed for that cost, nor will they control National Guard assets under Title 32.⁵²

The Economy Act (31 U.S.C. § 1535) is another authority that allows federal agencies to purchase goods and services on a reimbursement basis from each other. This authority can be used when DoD responds to an emergency prior to the enactment of the Stafford Act; possibly when the response is provided under the Immediate Response Authority if the Stafford Act does not reimburse retroactively.⁵³

G. SUMMARY

The current forms of the PCA, the Insurrection Act, and the Stafford Act provide legal authorities and limits for the military to respond to a DSCA operation and to restore public order if required. However, as stated in Chapter I, a disaster response by DoD must not violate the public's trust. If public order can be regained by using state-active National Guard forces, and they are seen as "policing" their own, then the federal DoD response just became less distracted and more focused on providing humanitarian support.

The HSA of 2002 and HSPD-5 began to operationalize disaster response efforts by assigning responsibilities to federal departments and agencies. FEMA, through DHS, is the lead federal agency for the federal response to a declared emergency or national disaster. Key points in HSPD-5 for DoD planners are that DHS is responsible for unifying the local, state, and federal response efforts (which may include Title 10, Title 32 and state-active military forces);⁵⁴ the

⁵² U.S. Congress, *The Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 93-288)* [Act on-line] (Washington D.C.: GPO, 2003), 42 U.S.C. 5121 – 5206, §§ 304, 403, 621, June 2007, accessed 14 December 2007; available from http://www.fema.gov/pdf/about/stafford_act.pdf; Internet.

⁵³ U.S. Congress, *Title 31, United States Code: The Economy Act, §1535* [excerpt on-line] (Washington D.C.: U.S. G.P.O., 2002, accessed 7 November 2007); available from http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2002/octqtr/pdf/48cfr17.500.pdf; Internet.

⁵⁴ Steve Bowman and others, *Hurricane Katrina DoD Disaster Response*, CRS report for Congress, RL33095 (Washington, D.C.: Congressional Research Service, Library of Congress, 19 September 2005), 2-3. The Army Corps of Engineers does not work for the (*continued on next page*)

National Guard (Title 32 and state-active) will work for the Governor as part of the state effort unless there is a compelling reason to federalize them under DoD; and Title 10 forces will work for DoD only.

HSPD-5 also recognized a potential friction point when it stated that the Secretary of Defense will only support DSCA operations “when consistent with military readiness and appropriate under the circumstances.”⁵⁵ That means there is no dedicated force available to respond to a DSCA operation (beyond command and control), and any potential responding force will only be sourced if priorities allow.

The bottom line on funding is that DoD is not appropriated funds by Congress for disaster relief DSCA operations in their annual budget. In order to perform DSCA operations another federal department or agency must request DoD support and reimburse them through either the Stafford or Economy Act.

These constraints and authorities generate bureaucracy and friction in a crisis situation. However, this bureaucracy is a normal function of a democratic government with multiple checks and balances. It is incumbent upon all levels of government and responding agencies to thoroughly understand the bureaucracy in order to provide effective relief in a crisis. The authorities and tools to do so exist, responders at the appropriate levels just need to be educated so they can fully access them in an emergency situation.

ASD(HD) or USNORTHCOM, they perform their emergency response mission under its mission of water navigation maintenance and flood control.

⁵⁵ George W. Bush, President of the United States, *Homeland Security Presidential Directive/HSPD-8 Management of Domestic Incidents* [Directive on-line] (Washington, D.C.: White House Office of the Press Secretary, 2003, accessed 14 November 2007); available from <http://www.whitehouse.gov/news/releases/2003/02/20030228-9.html>; Internet.

IV. THE PROCESS AND INHERENT WEAKNESSES

A 2002 revision of the U.S. Unified Command Plan (UCP) established a new combatant command, U.S. Northern Command. USNORTHCOM is responsible for homeland defense and for assisting civil authorities in accordance with U.S. law. The commander of USNORTHCOM receives all operational orders from the U.S. President, through the Secretary of Defense.⁵⁶

With the establishment of the Department of Homeland Security and U.S. Northern Command, coupled with the lessons learned in the aftermath of Hurricane Katrina, the national response to man-made or natural disasters received intense scrutiny and focus at all levels of government. The overriding principle of disaster response is to provide relief to the affected area using local and state resources first, and then apply federal capabilities where there are shortfalls. The *science* of achieving an effective response that uses capabilities from three levels of government requires an understanding of the deliberate bureaucracy that governs the effort. The *art* of achieving a seamless response requires working the bureaucracy to minimize the response gap⁵⁷ that is inevitable because requirements will not reveal themselves until after the disaster has occurred.

A. THE PROCESS

The National Response Plan (NRP current version is dated December 2004) is the overarching document that details the response process during an emergency or catastrophic event. Coordination and synchronization for the federal response are achieved through the Secretary of Homeland Security utilizing the National Incident Management System (NIMS). According to the NRP, “Resource and policy issues are addressed at the lowest organizational

⁵⁶ U.S. Department of the Army, *DCSINT Handbook No. 14, Defense Support of Civil Authorities* (Fort Leavenworth, KS: U.S. Training and Doctrine Command, 15 August 2005), IV-8.

⁵⁷ The response gap is that time period that spans from when a requirement is identified (i.e., search and rescue, medical, trucks, etc) to when it is coordinated for, to when it arrives and starts performing its intended function. As requirements are not known prior to an event, coupled with the fact that requirements are satisfied in a bottoms-up process (local-state-federal), there is (*continued next page*)

level practicable. If the issues cannot be resolved at that level, they are forwarded up to the next level for resolution.”⁵⁸

The NRP uses a functional approach by grouping federal capabilities into Emergency Support Functions (ESF). There are 15 ESFs that provide an organizing structure for supporting, resourcing, and servicing an event’s requirements (see Figure 1). The ESFs are composed of primary and support departments or agencies based on authorities, resources, and capabilities.⁵⁹ Consistent with being in a support role during a DSCA operation, DoD is not a primary in any of the 15 ESFs.⁶⁰ However, because of DoD’s extensive capabilities they can potentially provide support in all ESFs. Thus, DoD is, and will always be, a provider of choice.

Consistent with the NRP, if local or state capabilities cannot address a requirement, they will pass their need from their local Emergency Operations Center (EOC), through the state EOC, to the federal Joint Field Office (JFO). In the JFO, the Secretary of Homeland Security is represented by the Principal Field Officer (PFO) and/or the Federal Coordinating Officer (FCO) who coordinate the federal response, through the 15 ESFs (each ESF is activated as required), State Coordinating Officer (SCO), and local representatives. The PFO and/or FCO provide unity of effort through the JFO to ensure that scarce resources are applied judiciously and effectively.⁶¹

In the JFO the DoD is represented by a Defense Coordinating Officer who is task organized under USNORTHCOM. According to the NRP:

The DCO serves as DoD’s single point of contact at the JFO. With few exceptions, requests for DSCA originating at the JFO are coordinated and processed through the DCO. The DCO may have a Defense Coordinating

inevitably a time gap if a federal resource is used. If DoD capability is used, that time gap can even be longer yet as DoD is the federal agency of last resort.

⁵⁸ U.S. Department of Homeland Security, *National Response Plan* (Washington D.C.: DHS, 2004), 17.

⁵⁹ Ibid, 10-11.

⁶⁰ The Army Corps of Engineers is the primary agency for ESF #3 – Public Works and Engineering, however, they do not work for the ASD(HD) or USNORTHCOM in this capacity, they perform their emergency response mission under its mission of water navigation maintenance and flood control. See footnote #54.

⁶¹ U.S. Department of Homeland Security, *National Response Plan* (Washington D.C.: DHS, 2004), 27-39.

ESF	Scope
ESF #1 - Transportation	<ul style="list-style-type: none"> Federal and civil transportation support Transportation safety Restoration/recovery of transportation infrastructure Movement restrictions Damage and impact assessment
ESF #2 - Communications	<ul style="list-style-type: none"> Coordination with telecommunications industry Restoration/repair of telecommunications infrastructure Protection, restoration, and sustainment of national cyber and information technology resources
ESF #3 - Public Works and Engineering	<ul style="list-style-type: none"> Infrastructure protection and emergency repair Infrastructure restoration Engineering services, construction management Critical infrastructure liaison
ESF #4 - Firefighting	<ul style="list-style-type: none"> Firefighting activities on Federal lands Resource support to rural and urban firefighting operations
ESF #5 - Emergency Management	<ul style="list-style-type: none"> Coordination of incident management efforts Issuance of mission assignments Resource and human capital Incident action planning Financial management
ESF #6 - Mass Care, Housing, and Human Services	<ul style="list-style-type: none"> Mass care Disaster housing Human services
ESF #7 - Resource Support	<ul style="list-style-type: none"> Resource support (facility space, office equipment and supplies, contracting services, etc.)
ESF #8 - Public Health and Medical Services	<ul style="list-style-type: none"> Public health Medical Mental health services Mortuary services
ESF #9 - Urban Search and Rescue	<ul style="list-style-type: none"> Life-saving assistance Urban search and rescue
ESF #10 - Oil and Hazardous Materials Response	<ul style="list-style-type: none"> Oil and hazardous materials (chemical, biological, radiological, etc.) response Environmental safety and short- and long-term cleanup
ESF #11 - Agriculture and Natural Resources	<ul style="list-style-type: none"> Nutrition assistance Animal and plant disease/pest response Food safety and security Natural and cultural resources and historic properties protection and restoration
ESF #12 - Energy	<ul style="list-style-type: none"> Energy infrastructure assessment, repair, and restoration Energy industry utilities coordination Energy forecast
ESF #13 - Public Safety and Security	<ul style="list-style-type: none"> Facility and resource security Security planning and technical and resource assistance Public safety/security support Support to access, traffic, and crowd control
ESF #14 - Long-term Community Recovery and Mitigation	<ul style="list-style-type: none"> Social and economic community impact assessment Long-term community recovery assistance to States, local governments, and the private sector Mitigation analysis and program implementation
ESF #15 - External Affairs	<ul style="list-style-type: none"> Emergency public information and protective action guidance Media and community relations Congressional and international affairs Tribal and insular affairs

Figure 1. Federal Emergency Support Functions⁶²

⁶² U.S. Department of Homeland Security, *National Response Plan* (Washington D.C.: DHS, 2004),12. Copyright reprint permission for this figure was granted on February 11, 2008 by the Command and Staff College copyrights coordinator.

Once the JFO is established, requests for assistance are triaged by the FCO from civil authorities (primarily the SCO). When the FCO determines that the primary ESF provider cannot provide a needed capability, he will begin analyzing available capabilities among the supporting departments and agencies. If it is determined that DoD has a capability that can satisfy a requirement, the FCO will ask the DCO to coordinate for its utilization.⁶⁴

REQUEST FOR ASSISTANCE

REQUESTOR

Federal Department or Agency

- On Behalf of State's Request
- Own Requirements

DDO

- On Behalf of State Request through DDO
- On Behalf of Federal Agency

DOD Executive Secretary

SecDef

ASD(HD&ASA)

JDOMS

Validation

Orders

Evaluation Criteria

- Legality
- Let's try
- Risk
- Cost
- Readiness
- Appropriateness

Combined Commanders

Baseline Agreements

Coordination/ Approval

RFA w/o DDO

RFA w/DDO

Info

ASD(HD&ASA) Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs

DDO - Defense Coordinating Officer

DOD - Department of Defense

JDOMS - Joint Director of Military Support

JFO - Joint Field Office

RFA - Request for Assistance

SecDef - Secretary of Defense

forwards the request through USNORTHCOM to the Assistant Secretary of Defense (Homeland Defense) (ASD(HD)) and the Joint Director of Military Support (JDOMS) who validates the

⁶⁵ U.S. Department of Defense, *JP 3-28, Civil Support* (Washington, D.C.: G.P.O., 2007), II-4. Copyright reprint permission for this figure was granted on February 11, 2008 by the Command and Staff College copyrights coordinator.

request and then publishes an execute order once the SECDEF approves. Joint Forces Command will source the requirement through the individual Services and USNORTHCOM establishes command and control relationships. Based on the magnitude and anticipated level of resource involvement, USNORTHCOM may utilize a Joint Task Force (JTF) to direct military operations. If a JTF commander is appointed, he or she will exercise operational control over all deployed DoD resources (excluding USACE resources and National Guard forces operating in state-active or Title 32 status).⁶⁶

B. INHERENT WEAKNESSES

As stated above, the art of a seamless DSCA operation requires working the bureaucracy to minimize the response gap⁶⁷ - a gap which is inevitable because authorities cannot respond to emergency requirements until after they reveal themselves. Anticipating requirements and setting response conditions to shorten the response gap will require a commitment of financial resources and human capital.

There are several inherent weaknesses which include communicating what is required through three levels of government. The inability to preposition relief assets inside the predicted ground-zero of a disaster, as those assets (human, equipments, or supplies) might become a casualty of the same disaster they are intending to provide relief. Local authorities may lack training in the NRP's processes, and in fact, may fail to communicate requirements to state authorities. The Joint Field Office may not have established communications with the affected areas. The Principal Field Officer and/or Federal Coordinating Officer will not establish a common operating picture, in order to facilitate a unity of effort, until after initial assessments are

⁶⁶ U.S. Department of the Army, *DCSINT Handbook No. 14, Defense Support of Civil Authorities* (Fort Leavenworth, KS: U.S. Training and Doctrine Command, 15 August 2005), IV-4.

⁶⁷ The response gap is that time period that spans from when a requirement is identified (i.e., search and rescue, medical, trucks, etc) to when it is coordinated for, to when it arrives and starts performing its intended function.

conducted and relayed to the JFO. Initial requirements/capabilities mismatch, or simply the movement of the required capability to the right location. A criminal element may choose to take advantage of the emergency conditions and begin looting activities, thereby creating a security dimension that could delay relief operations.

Finally, on the other end of the spectrum is the potential to respond with too much capability congesting the interior lines of communication into the affected area. For example:

Although the National Guard units from outside states deployed to Louisiana and Mississippi as a result of EMAC [Emergency Management Assistance Compact]⁶⁸ requests and personal conversations between the TAGs [The Adjutant Generals] and between governors across the states, the units sent largely consisted of the types considered “likely to be required” by the outside states. There was no attempt to use the process known in the military as “troop-to-task analysis.”⁶⁹

The responding National Guard troops did not have a specified mission. Clogged interior lines of communication, coupled with other inherent weaknesses, may create another disaster that actually widens the response gap. The art of balancing relief operations must establish an organized “push-pull” system. The highest level of government responding to a Stafford Act disaster must provide that balance and a unity of effort.

In a Stafford Act response, the federal government through the DHS, provides balance and unity of effort through the PFO, or his representative (the FCO), from the JFO. The JFO is the center of gravity, and that is precisely where DoD must plug into, and where the state TAG (or his representative) must be in order to achieve unity of effort. The JFO is the “field” inter-agency higher headquarters controlling relief operations.

This conclusion in the previous paragraph may state the obvious, but if and when DoD establishes a Joint Task Force to command and control federal military assets, the direct link that

⁶⁸ Lynn E. Davis and others, *Hurricane Katrina: Lessons for Army Planning and Operations* (Santa Monica, CA: RAND, 2007), 20-21. EMAC is a State assistance agreement to provide assistance across State lines in times of disaster. It is not a federal program and may cause further issues if the President wants to federalize responding National Guard forces that come from outside the affected State.

⁶⁹ Ibid, pp. 24-25.

the DCO provides to the JFO becomes marginalized. The DCO is no longer the senior DoD official in the affected area (JTF commanders are normally General Officers), and is therefore no longer the single DoD POC. To effectively maintain the unity of effort through the JFO, the JTF commander should establish a “special” relationship with the DCO (and with the PFO without usurping the DCO’s role as DoD’s single point of contact). The DCO in kind should plug into the JTF commander’s operations staff to ensure the same operating picture exists.

C. SUMMARY

There is a plan, but like any plan, procedural obstacles and administrative breakdowns can result in miscues and failures drawing the wrath of both the media and the population, as well as the ire of elected officials at all levels. More importantly, failure in relief operations affects people, a people who have no idea of the “how” – they just want relief to come. The main conclusion of this chapter is that, regardless of the established bureaucracy that provides governmental oversight, and the subsequent checks and balances, if DHS establishes unity of effort through the JFO then the relief executors will overcome the inherent friction caused by the bureaucracy of the plan. In Chapter VI, solutions to the NRP’s inherent weaknesses, with regard to shortening the response gap, are evaluated.

V. THE ROLE OF THE NATIONAL GUARD

The National Guard is descended from the colonial militias which existed prior to the adoption of the Constitution. With the adoption of the Constitution, the federal government acquired authority to organize, arm, and discipline the militia, and to call the militia into federal service in order to execute the laws of the Union. As a result of this history, the National Guard is neither a purely state nor a purely federal organization. Rather, it is both a state and federal organization.⁷⁰

- Congressional Service Report to Congress, 2005.

The National Guard is comprised of 54 separate militias (one for each state, Puerto Rico, Guam, the Virgin Islands, and the District of Columbia). All National Guard units, except one, are controlled by the governor of the state from which they organize and train. The District of Columbia's National Guard is federalized and under federal control at all times. National Guard units can operate under three distinct duty statuses that determine their chain-of-command, who pays for their services, and how they may be employed.⁷¹

A. MILITARY DUTY STATUS

State active duty status is commonly used for state responses to man-made or natural disaster that affect their territory. National Guard soldiers under this status perform their duties in accordance with the authority of the state's constitution and laws. The state treasury compensates these soldiers for their duty, and the governor, through the state Adjutant General (TAG) commands and controls National Guard forces in this status. Soldiers performing duty under this status are not subject to the Posse Commitatus Act (PCA) or the Uniform Code of Military Justice (UCMJ).⁷²

⁷⁰ Steve Bowman and others, *Hurricane Katrina DoD Disaster Response*, CRS report for Congress, RL33095 (Washington, D.C.: Congressional Research Service, Library of Congress, 19 September 2005), 6-7.

⁷¹ *Ibid*, 7.

⁷² U.S. Department of Defense, *JP 3-28, Civil Support* (Washington, D.C.: G.P.O., 2007), II-12.

Title 32 status is used for training the National Guard forces (initial individual training, weekend drills, and annual training). It is also used for limited operational missions (counter drug, homeland defense (to include DSCA), and weapons of mass destruction civil support teams). Though the Federal government funds their pay and allowances, the state governor, through the TAG, exercises command and control over these forces, and these forces are not subject to the PCA or UCMJ.⁷³

Title 10 status is federal active duty, and pay and allowances are federally funded. The President, through the SECDEF, provides command and control of National Guard forces in this status, and, while in Title 10 status these Soldiers are subject to the PCA and the UCMJ.⁷⁴

From a DoD budgeting perspective, the least attractive National Guard duty status in a DSCA operation is Title 32. Under this status, the DoD funds the soldier's pay and allowances but has no authority over their mission, employment, or discipline. In addition, because the Stafford Act only reimburses for supplies consumed and services rendered, and not pay and allowances, DoD must absorb an unforecasted expense.⁷⁵

However, from a DSCA operational perspective, Title 32 gives the Governor more latitude to respond to law enforcement issues (e.g., looting) with his or her National Guard forces, as they are not subject to the PCA. In addition, using federal dollars tends to level the compensation playing field by providing the same pay and allowances to *all* responding forces (Title 10 forces and other National Guard forces responding under Title 32). Finally, states do not budget for a natural disaster beyond planning and preparation, and so whether it is a federal departmental (a DoD burden) or state shortfall, the burden of final payment should not dictate National Guard duty status – operational requirements should.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Steve Bowman and others, *Hurricane Katrina DoD Disaster Response*, CRS report for Congress, RL33095 (Washington, D.C.: Congressional Research Service, Library of Congress, 19 September 2005), 8.

B. COMMAND AND CONTROL OPTIONS⁷⁶

The associated issue with regard to duty status is command and control (C2). Three generally accepted C2 structures are feasible in a combination Title 10 and Title 32/state-active duty DSCA operation. The first is a purely Title 10 response using federalized National Guard forces with responding active duty forces. The second is a dual status Joint Task force. In this construct, the JTF Commander is in both a Title 10 and Title 32 status,⁷⁷ and commands both Title 10 and Title 32/state-active forces (forces are not mixed in this construct). In this status, the JTF Commander is responsible to both the President and the Governor. The third commonly accepted construct is a parallel Title 10 and Title 32/state-active response model. In this construct the President, through the Secretary of Defense, commands Title 10 forces and the Governor, through the TAG, commands Title 32 and state-active forces.⁷⁸

As the aftermath of Hurricane Katrina unfolded, the issue of a Title 10 and Title 32 command and control structure played out at the highest levels:

Governor Blanco opposed giving up her command of National Guard troops, favoring a separate C2 structure for active-duty forces. Governor Blanco's view was initially shared by senior leaders in Washington, including Secretary of Defense Donald Rumsfeld and General Blum. However, once it became clear that large numbers of active-duty land forces would be deployed to the area, views in Washington changed. On September 2, senior DoD civilian and military leaders recommended to the president a dual-hat command structure, which the White house in turn presented to Governor Blanco.⁷⁹

⁷⁶ Analysis into this complex command and control dynamic is deliberately shallow in order to maintain focus on this monograph's research question. Recommended research that addresses this issue in detail is: Peter A. Topp, *What Should Be the Relationship between the National Guard and United States Northern Command in Civil Support Operations Following Catastrophic Events* (Monterey, CA: Naval Postgraduate School, 2006).

⁷⁷ U.S. Congress, *Title 32, United States Code: National Guard* (Washington D.C.: U.S. G.P.O., 1950s), §315. Title 32 §315 authorizes the President to permit a Title 10 Officer to accept a National Guard commission "without prejudicing his rank and without vacating his regular appointment."

⁷⁸ Peter A. Topp, *What Should Be the Relationship between the National Guard and United States Northern Command in Civil Support Operations Following Catastrophic Events* (Monterey, CA: Naval Postgraduate School, 2006), 39-46.

⁷⁹ Lynn E. Davis and others, *Hurricane Katrina: Lessons for Army Planning and Operations* (Santa Monica, CA: RAND, 2007), 40-41.

Governor Blanco rejected the dual-hat proposal, as she believed that her TAG was fulfilling his responsibilities and a dual-hat arrangement would have subordinated the Louisiana's National Guard forces to Lieutenant General Honoré.⁸⁰ In this construct, Lieutenant General Honoré would have been subordinate to both President Bush and Governor Blanco; by rejecting this status she erased any potential ambiguity over divided loyalty. An officer in a dual-status role can only maintain complete loyalty when both masters are in complete agreement. If not, the officer is forced to make a choice that will ultimately disappoint one or the other.

C. ADVANTAGES AND DISADVANTAGES OF COMMAND AND CONTROL OPTIONS⁸¹

The advantage of federalizing the National Guard and creating a purely Title 10 response is that it creates a clear unity of command/unity of effort.⁸² The disadvantages are that, one, it usurps the state's constitutional right to employ its National Guard (more so when the state disagrees with federalizing the National Guard). Two, there is no military capability to operate in a law enforcement role unless the President invokes the Insurrection Act.⁸³ Three, it marginalizes the state authorities when the populace perceives that the state government has no capability to respond to immediate needs.

The advantage of the dual-status role is that it potentially provides unity of command/unity of effort, but only if the President and Governor completely agree. The disadvantage is that there is a potential for divided loyalty as previously discussed. Furthermore, because the dual-status officer would not be appointed until after the response grows, it would

⁸⁰ Ibid.

⁸¹ Criteria for advantages and disadvantages were arbitrarily selected and evaluated/weighted by the monograph author based on two years of experience at U.S. NORTHCOM working with planners and leaders who made these decisions during real world DSCA operations and exercises.

⁸² This refers only to "military" unity of effort. DHS provides unity of efforts for the entire relief operation.

⁸³ Jennifer Elsea, *The Use of Federal Troops for Disaster Assistance: Legal Issues*, CRS report for Congress, RS22266 (Washington, D.C.: Congressional Research Service, Library of Congress, 2005), 3.

appear to many that the TAG was relieved. Finally, if the JTF Commander is perceived more “active-duty” than National Guard, the state’s response becomes marginalized as discussed in the purely Title 10 construct.

The advantages of using parallel chain-of-commands are that, one, lines of authority are clear. Two, the state maintains an early and constant capability to respond to emergency requirements. Three, the state can immediately employ the National Guard in a law enforcement role to stave off looting, or other unsavory behavior because of the disaster. Four, it provides an exit strategy for the federal forces once the response is back under the control of, and within the state’s capability to manage. The one disadvantage is that it lacks unity of command, and potentially unity of effort amongst “military” forces. However, if the NRP is working as designed, DHS will establish unity of effort, for not only the federal troops and state National Guard, but for all departments and agencies that cut through all three levels of government.

C. SUMMARY

In the aftermath of a crisis, the short time-line to respond does not support establishing different command and control constructs that depart from what is already habitually established. In fact, departing from firmly established command and control structures has the potential to create animosity between active and National Guard forces, and create friction between state and federal authorities. Authorities should only consider a purely federal (National Guard federalized) or a dual-hatted command and control construct for a specified and small-scale event, and when the time horizon provides opportunity for the mixed force to train together.⁸⁴ The only other situation where a command and control change may be appropriate is when the state is incapacitated and is incapable of providing leadership.

⁸⁴ Such as a National Special Security (NSS) event like a national party convention, Boy Scout Jamboree, or a G8 Economic summit.

VI. THE RESPONSE GAP

As stated prior, the *art* in executing a seamless DSCA operation requires working the bureaucracy to minimize the response gap,⁸⁵ a gap that is inevitable because authorities cannot respond to emergency requirements until after they reveal themselves (see Figure 3). Anticipating requirements and setting response conditions to shorten the response gap will require a commitment of financial resources and human capital.

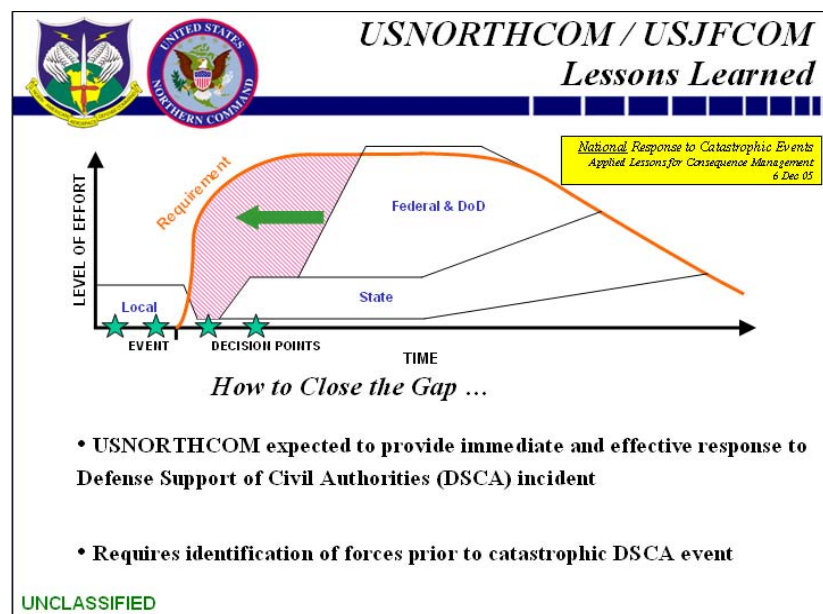


Figure 3. The Response Gap⁸⁶

⁸⁵ As stated previously, the response gap is that time period that spans from when a requirement is identified (i.e., search and rescue, medical, trucks, etc) to when it is coordinated for, to when it arrives and starts performing its intended function.

⁸⁶ U.S. Northern Command, *Pre-Scripted Mission Assignments (PSMA)*, [briefing presented at the 2007 National Emergency Preparedness Liaison (EPLO) Conference] (Peterson AFB, CO: 27 February 2007). Copyright reprint permission for this figure was granted on 11 February 2008 by the Command and Staff College copyrights coordinator.

A. THE THREE TIERED RESPONSE SYSTEM

Since Hurricane Katrina, DoD and USNORTHCOM have developed a three tiered response system that, if resourced, will significantly shorten the DoD response gap to a DSCA incident. The three tiers are organized around known requirements, regardless of the scope of the incident (Tier-1), anticipated requirements based on historical scoping (Tier-2), and unforeseen requirements generated by the sheer magnitude of an incident (Tier-3).⁸⁷

Tier-1 response forces are assigned to USNORTHCOM and are normally deployed when the federal government establishes a Joint Field Office in response to an actual or predicted incident. Tier-1 forces include Defense Coordinating Officers/Defense Coordinating Elements (DCO/DCE), Emergency Preparedness Liaison Officers (EPLO), USNORTHCOM's Commander's Assessment Element (CAE), and command and control assets through either USNORTHCOM's own headquarters or one of its component commands. The tasks for Tier-1 forces are to scope anticipated requirements and to respond to formal requests for DoD capabilities in order to alert potentially deploying forces as soon as legitimately possible.⁸⁸

Tier-2 response forces are those forces and capabilities that are normally required and requested during a DSCA incident. The foundation for Tier-2 forces is the 26 Pre-Scripted Mission Assignments (PSMA) developed in the post Hurricane Katrina after action review analysis (see Figure 4). The purpose for these 26 PSMA's is to anticipate the most likely requirements in the aftermath of a catastrophic hurricane, chemical, biological, radiological, nuclear or a high explosive incident. PSMA's provide the basic templates for DHS to efficiently

⁸⁷ William G. Webster Jr., Lieutenant General, U.S. Army, interview by author, 18 September 2007, Fort Leavenworth, KS. LTG Webster shared this emerging three tiered system/concept that is not yet documented in any DoD or USNORTHCOM publication.

⁸⁸ Ibid.

request DoD for assets that they will most likely need based on national response planning scenarios.⁸⁹

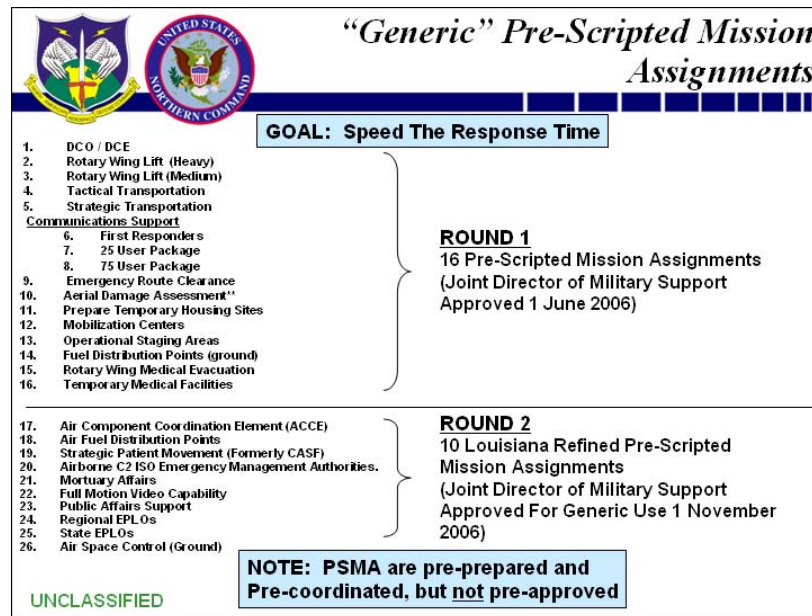


Figure 4. Pre-Scripted Mission Assignments⁹⁰

These forces and capabilities are identified and notified by the Force Provider, Joint Forces Command (JFCOM) to increase their readiness in order to shorten the response gap. The Commander, USNORTHCOM can put these forces on a Prepare to Deploy Order (PTDO) and deploy them once a Mission Assignment is received from the Department of Homeland Security.⁹¹

Since Hurricane Katrina, the authority to approve Tier-2 Mission Assignments was delegated from the SECDEF to Commander, USNORTHCOM. These subtle adjustments in the response bureaucracy (identifying anticipated capabilities through PSMA and delegating the

⁸⁹ U.S. Northern Command, *Pre-Scripted Mission Assignments (PSMA)*, [briefing presented at the 2007 National Emergency Preparedness Liaison (EPLO) Conference] (Peterson AFB, CO: 27 February 2007).

⁹⁰ Ibid. Copyright reprint permission for this figure was granted on February 11, 2008 by the Command and Staff College copyrights coordinator.

⁹¹ William G. Webster Jr., Lieutenant General, U.S. Army, interview by author, 18 September 2007, Fort Leavenworth, KS.

approval authority to the Combatant Commander) can significantly reduce the DoD response gap.⁹² However, this segment of the tiered response system can only succeed if JFCOM can sufficiently source the anticipated response forces (this issue is addressed in Part B of this Chapter).

Tier-3 forces and capabilities are associated with a catastrophic event that would require a DoD response exceeding Tier-2 forces in scope and depth. The SECDEF in this scenario retains mission assignment approval authority as described in Chapter IV. Once the SECDEF approves the mission assignment, JFCOM will source the requirement using available forces from all the services.⁹³

B. FORCE GENERATION

Ideally, the Joint Strategic Capabilities Plan, DoD's cornerstone document for deliberate planning, would apportion and assign forces to USNORTHCOM to satisfy the requirements identified in a Tier-2 response described above. Short of assigned forces, JFCOM would source the Tier-2 requirement on a seasonal and/or as needed basis for planning, training, and certification. *As a minimum*, JFCOM should seasonally identify Tier-2 forces for *planning purposes*, allowing USNORTHCOM to coordinate with identified forces in order to convey purpose and intent. This would also allow the identified force to prepare for the possibility of deploying to a DSCA incident in the context of its current readiness posture (available, ready, or resetting).

The current reality is, however, as the DoD enters its sixth year fighting the Global War on Terrorism (GWOT), there are limited Army and Marine Corps assets readily available to

⁹² Ibid.

⁹³ Ibid. In this interview LTG Webster also indicated that no statutory changes were required at this time. Further, he indicated that this three tiered process is in synchronization with the forthcoming National Response Framework (NRF), which will replace the NRP. The subtle change is one of a "forward leaning posture" at all levels of the response.

source against DSCA operations (seasonally or otherwise).⁹⁴ Those Army and Marine assets once redeployed from the fight immediately go into a reset status and prepare for the next eventual deployment. Once the unit resets, they move to the ready pool and await a mission which will put them in the available pool. According to the Army's primary force generator, Forces Command (FORSCOM), the Army is decisively engaged and cannot commit forces to the DSCA mission in lieu of GWOT requirements. Currently DSCA requirements are a category four priority which, in the current GWOT context, will not likely be filled until *after* a DSCA event happens with clearly generated requirements.⁹⁵

However, the other reality is once a DSCA incident occurs, particularly if the incident is the size of Hurricane Katrina, DoD will respond. Right after Hurricane Katrina made landfall (four years into the GWOT) FORSCOM ordered the Army to:

Be prepared to provide a brigade size force to operate distribution centers, and/or if appropriate authorization is received, conduct crowd control and security in the vicinity of New Orleans.

Responding to warning orders over the next days, the Division Ready Brigade of the 82d Airborne Division increased the state of readiness of all of its 5,000 soldiers. The Second Brigade Combat Team of the First Cavalry Division prepared for a mission that would likely involve search and rescue, evacuation, debris removal, traffic control, and commodity distribution. The commander of the Second Marine Expeditionary Force also began to make plans to provide not only aircraft and engineering equipment but also air and ground forces. The 24th Marine Expeditionary Unit, an infantry battalion of 1,200 Marines, was postured at the highest state of readiness.⁹⁶

If, in the middle of fighting combat operations in Afghanistan and Iraq DoD was able to alert and deploy these forces (and more)⁹⁷ to support DSCA operations in Louisiana and Mississippi, it makes logical sense that JFCOM could minimally source Tier-2 level response forces for *planning and coordination purposes*.

⁹⁴ U.S. Department of the Army, *Forces Command, G3 Plans*, Advanced Operation Arts Studies Fellowship field work briefing on the record (confirmed by e-mail, February 11, 2208), December 5, 2007.

⁹⁵ Ibid.

⁹⁶ Lynn E. Davis and others, *Hurricane Katrina: Lessons for Army Planning and Operations* (Santa Monica, CA: RAND, 2007), 32-33.

⁹⁷ Not identified in the quote cited in footnote number #96 were Navy and Air Force assets that responded to the operation providing medical, airlift, and search and rescue capabilities.

Despite the high operational tempo of all the services during the GWOT it seems counterproductive *not* to identify Tier-2 response forces. When time is the greatest resource available to commanders preparing for future combat operations, it would only benefit those commanders if they were alerted to the possibility that they could also support a DSCA operation while they, at the same time, prepare for a combat deployment. The author does not advocate, nor recommend burdening a sourced Tier-2 unit with a full scale training and certification program, as that would place undue hardship on the unit and its personnel. But sourcing Tier-2 units for planning purposes would allow USNORTHCOM to convey purpose and intent to commanders, and for the commanders to plan for the possible contingency to an adequate level of comfort.⁹⁸

D. DEPLOYING FORCES BEFORE REQUESTED

In addition to pre-positioning Tier-1 forces to or near the affected area, it may be operationally prudent to pre-position critical Tier-2 forces if the predicted devastation is catastrophic. Key capabilities, like vital command and control platforms, air space control (ground) assets to facilitate air medical evacuations and the early movement of supplies and equipment, and skeletal medical capabilities, could set the conditions for a significantly shorter response gap. This tactic presupposes that DHS will in fact request these capabilities, and it may require changes to statutory constraints governing the application of DoD assets in a Stafford Act response. However, in order to appropriately set conditions it may be necessary to pursue these legislative changes.

⁹⁸ Identifying Tier-2 units may uncover critical equipment shortfalls in time to redirect the tasking or overcome the shortfall with an equipment sourcing solution. For example, if an aviation unit is redeploying from Iraq and was directed to leave their UH-60s in theater as Theater Provided Equipment (TPE) they may not be the right choice for a Search and Rescue mission. Waiting for the incident to occur, and then sourcing that same unit will only delay getting that needed capability to the DSCA incident, thus widening the response gap.

USNORTHCOM's analysis of 15 separate disaster scenarios has created a package of 26 pre-scripted mission assignments.⁹⁹ However, these pre-scripted mission assignments are designed to assist DHS and state authorities to better request military capabilities *after* the disaster has struck. This recommendation would allow USNORTHCOM to lean forward, in a more deliberate fashion, and allow them to deploy critical, but limited, capabilities based on analysis of the predicted consequences of the disaster. These "early deployers" are Tier-2 forces and would follow the same force generation principles discussed in chapter VI.

E. SUMMARY

DoD and USNORTHCOM have done a remarkable job analyzing their response weaknesses post-Hurricane Katrina. Fundamentally, they have remedied the weaknesses in their response capability by creating the three-tiered response system. There are acknowledged weaknesses in this system because the system depends on sourcing capabilities outside USNORTHCOM's control. If the system is not sourced with a standing force, it *can* still achieve a shortened response gap if it is sourced for planning purposes. JFCOM must cyclically source Tier-2 response forces, for planning purposes, at a frequency that takes into account the rapid and dynamic GWOT sourcing.

⁹⁹ U.S. Department of Defense, Joint Director of Military Support (JDOMS), *Memorandum: Pre-scripted Mission Assignments (Rounds 1 and 2) with Adjusted Cost Factors* (Washington D.C., 1 November 2006).

VII. DOD CULTURE AND THE MEDIA



The moment Mayor Ray Nagin stated that Lieutenant General Russell Honoré was a “John Wayne” dude who was getting “stuff done,” and advocated that he get full authority in the operation,¹⁰¹ DoD and the federal government became the focus of the relief operation, and Lieutenant General Honoré became its face. When DoD becomes the face of an operation and is perceived as in charge, it makes it extremely difficult to hand the responsibility of that operation back to the state and local providers once they are able to execute. In a DSCA operation DoD must consider creating a new cultural paradigm when they are not in charge, one that makes the state and local authorities in charge and successful at all costs – a paradigm where DoD quietly supports the local and state governments and sets the conditions for their success.¹⁰²

¹⁰⁰ Cable News Network screen shot of Lieutenant General, USA, Russell Honoré’s “Stuck on Stupid” press conference; accessed on January 5, 2008; available from <http://www.exposetheleft.com/2005/09/20/stuckonstupid/>; Internet. Copyright reprint permission for this figure was granted on 11 February 2008 by the Command and Staff College copyrights coordinator.

¹⁰¹ Ray Nagin, Mayor, City of New Orleans, LA [on-line interview by Radio WWL - AM870 with Radio's Garland Robinette] (New Orleans, LA: 2 September 2005, accessed 15 December 2007); available from <http://www.cnn.com/video/#/video/us/2005/09/02/wwl.nagin.intv.affl>; Internet.

¹⁰² William G. Webster Jr., Lieutenant General, U.S. Army, interview by author, 18 September 2007, Fort Leavenworth, KS.

A. FOCUSING THE MESSAGE

DSCA operations, though not a kinetic fight, share many of the same planning and execution characteristics as any other military operation on the spectrum of conflict. This is particularly true in the context of around-the-clock media coverage. DoD, in a DSCA operation, conducts operations with a task and purpose and is constantly being “weighed and measured” in the information domain. Because DSCA is normally connected to a humanitarian framework, this does not mean that the military can ignore how they are perceived by the public they are in fact assisting. DoD must plan and execute an Information Operation (IO) that is specifically tailored to the task and purpose at hand, convey reality (good or bad) in a genuine manner, and do so by staying in “DoD’s lane.” In other words, since DoD is not the lead federal agency in charge of the DSCA incident, they should not become the “face” of the relief effort in the media. While at the same time, because they are supporting the effort, they must ensure that their IO plan is nested with the lead federal agency’s.

As stated in chapter IV, the overriding principle of a disaster response is to provide relief to the affected area by using local and state resources first, and then apply federal capabilities where there are shortfalls. Thematically then, this is a state and local fight, and as such, the state and local efforts should be the centerpiece of the IO campaign at all governmental levels. If the lead federal agency’s or DoD’s operations and IO campaign are not designed to support and sustain the state and local effort, then they are violating their own response principle.

The Army’s public affairs office highlighted two major media challenges that have application in a DSCA operation: an accurate and complete story versus an inaccurate and incomplete story, and agenda journalism.¹⁰³ DoD will never have the “complete story” in an operation where they are not in charge; therefore, they must make a concerted effort to nest their

¹⁰³ U.S. Department of the Army, *3d Annual Emerging Senior Leader VTC* [world-wide video teleconference briefing presented by the Department of the Army Senior Leaders] (Washington D.C.: 18 January 2008).

message with the lead federal agency. And, because a DSCA incident cuts through three levels of government, agenda journalism is inevitable and should be expected.

One of the 26 pre-scripted mission assignments that DoD and USNORTHCOM created post Hurricane Katrina was for public affairs support. Specifically, they pre-scripted “DoD Public Affairs broadcast transmission support to the Joint Information Center” as part of Emergency Support Function (ESF) #15 (this is only a technical means to transmit information *not* actual public affairs support).¹⁰⁴ If not already part of the DCO’s or the responding JTF’s overhead, the author of this monograph strongly recommends adding *actual* public affairs support to either of those staffs in order to work directly with ESF #15. This would ensure that an accurate and a more complete “story” is conveyed to the public through the media. In addition, by nesting with ESF #15, the story is a coordinated message that will help DoD to stay in its lane.

With regard to agenda journalism, DoD must simply be vigilant with the truth. When non-factual information is used in a story that is misleading (specifically with regard to the DoD) the deployed JTF or DCO must quickly set the record straight with facts at every opportunity.¹⁰⁵ The responding JTF or DCO must take time to educate the public on the bureaucratic response processes as they specifically relate to DoD’s response. This may not assuage the actual friction created by a bureaucratic response, but it will further a greater understanding of why relief is seemingly slow or unresponsive, *and* it may provide the public with a realistic timeline which will ultimately manage expectations.

Even in a DSCA operation there is an ongoing battle in the information domain and the responding military force has a key role in that fight. DoD leaders must speak with one voice on

¹⁰⁴ U.S. Department of Defense, Joint Director of Military Support (JDOMS), *Memorandum: Pre-scripted Mission Assignments (Rounds 1 and 2) with Adjusted Cost Factors* (Washington D.C., 1 November 2006), 21.

¹⁰⁵ U.S. Department of the Army, *3d Annual Emerging Senior Leader VTC* [world-wide video teleconference briefing presented by the Department of the Army Senior Leaders] (Washington D.C.: 18 January 2008).

the strategy of the response effort, and they must synchronize that voice with the lead federal agency. Becoming more proactive and finding ways to improve the speed in making on-the-spot corrections to the record will reduce the information gap. Practicing brevity in spoken and written communications, providing candid information, maximizing public affairs assets at all levels, and telling it all, “fast and first” will gain and maintain a public trust in the overall response.¹⁰⁶

B. DOD CULTURE IN A DSCA OPERATION

If local and state authorities are perceived to have succeeded in their response effort, then the federal and DoD response was successful. If DoD can achieve that, success without deploying a JTF Commander that out-ranks the state’s Adjutant General then the state and the state’s National Guard are more likely to take back the lead responsibility and burden for relief operations . Unless the relief operation compels a three or four star JTF (i.e., multiple, simultaneous, and catastrophic death and destruction) the author of this monograph recommends that the DoD never deploy a JTF commander in the rank of Lieutenant General or General.

As stated prior, when DoD becomes the face of an operation and is perceived as in charge, it makes it extremely difficult to hand the responsibility of that operation back to the state and local providers once they are able to execute. In a DSCA operation, DoD must consider creating a new cultural paradigm when they are not in charge, one that makes the state and local authorities successful at all costs – a paradigm where DoD quietly supports the local and state governments and sets the conditions for their success.¹⁰⁷

¹⁰⁶ Ibid.

¹⁰⁷ William G. Webster Jr., Lieutenant General, U.S. Army, interview by author, 18 September 2007, Fort Leavenworth, KS.

C. SUMMARY

Perception in any operation, good or bad, is powerful. Even when relief operations are substandard, bureaucratic, and slow, the public is more forgiving when the information surrounding the operation is factual, candid, and useful. Those involved must spare no effort in getting pertinent information out to the affected population. Applying this strategy with the principle of propping-up the local and state authorities will win the information war, and facilitate a smoother relief operation. Perception is not only created by what is conveyed through the media, but by what the DoD *does* on the ground. DoD's actions must convey confidence in the local and state response, and must do so without usurping the authority of the Governor's National Guard – simply deploying a more senior officer than the state's TAG may create the wrong perception.

VIII. THE WAY AHEAD

In this new normal, with the possibility of terrorist attacks, natural disasters and industrial accidents, we need this culture of preparedness. A vast part of America still thinks, ‘That couldn’t happen where I live.’ And they are dead damn wrong.¹⁰⁸

- Lieutenant General Russell Honoré, January 10, 2008

DoD should treat DSCA as a core mission and, irrespective of the current military OPTEMPO, JFCOM must seasonally source forces to satisfy the most likely DSCA response requirements for planning purposes.¹⁰⁹ A sourced capability initially designed against pre-scripted capabilities to meet predicted response requirements would allow tasked units to prepare for a potential response.

Since USNORTHCOM was activated in 2002, DoD has made significant and relevant changes to improve support to civil authorities in times of crisis. Taking lessons learned from the seminal devastation caused by Hurricane Katrina, DoD and USNORTHCOM have developed strategies to leverage the existing bureaucracy to shorten the response gap; and they are now focusing on the state and local authorities as their center of gravity. This new paradigm reads: if the local and state authorities succeed, then DoD succeeds.¹¹⁰ With the implementation of some subtle recommendations, the friction associated with the response may become much less.

A. FORCE GENERATION

The first recommendation is for Joint Forces Command (JFCOM) to seasonally source forces *for planning purposes* in order for USNORTHCOM to convey purpose and intent. DoD’s

¹⁰⁸ Russell Honoré, Lieutenant General, USA, *General: U.S. didn’t learn from Katrina* [quoted in newspaper article on-line], (“Stars and Stripes,” Mideast Edition, 10 January 2008, accessed 10 January 2008); available from <http://estripes.osd.mil/>; Internet.

¹⁰⁹ Seasonally source refers to the periods of time that a specific disaster threat may demand the sourcing of a specific capability (e.g., hurricane season runs from June 1st through November 30th).

¹¹⁰ William G. Webster Jr., Lieutenant General, U.S. Army, interview by author, 18 September 2007, Fort Leavenworth, KS.

OPTEMPO during the last six years has created a resistance to sourcing any mission that is not a Category I or II requirement, such as rotational forces supporting Operations Enduring and Iraqi Freedom. DSCA missions prior to an actual disaster fall into a Category IV priority which does not allow advanced notification to units that would deploy into a DSCA relief operation. This recommendation does not advocate assigning forces to USNORTHCOM, nor does it require a mission rehearsal prior to the time period of potential execution.¹¹¹ The sourcing notification is for planning and advanced coordination in order to shorten that critical response gap after notification.

B. ACTIVE DUTY VERSUS TITLE 32 AND STATE ACTIVE DUTY

The second recommendation is to simply end the debate over the use of Title 10 and Title 32 forces, and for DoD and states to accept the fact that there will be two military chains-of-command in a DSCA operation. Even if the “military forces” were unified under one military structure the coordinating authority for the entire “operational” effort is still the responsibility of the Principal Field Officer (PFO) from DHS. The PFO is responsible for the unity of effort, not DoD. The PFO has the responsibility to ensure that the state capabilities (Title 32 National Guard forces) are exhausted prior to using federal capabilities, not DoD. In fact, if the relief operation is executed in accordance with the NRP, it is more advantageous to have both Title 10 and Title 32 forces available, because it allows the state to use Title 32 forces in a law enforcement capacity. Additionally, trying to designate the National Guard as the sole Homeland Security/Homeland Defense force sub-optimizes the full military capability that can respond to a DSCA operation.

¹¹¹ The author of this monograph does not advocate assigning forces at this time. When DoD is not decisively engaged in the GWOT there is an argument for assigning forces to USNORTHCOM, and that discussion should take place at that time.

C. DEPLOYING FORCES BEFORE REQUEST

The third recommendation is to allow DoD to mobilize more than command and control forces (Tier-1 forces) prior to a predicted natural disaster in order to shape the conditions for a response. USNORTHCOM has analyzed 15 separate disaster scenarios and has created a package of 26 pre-scripted mission assignments.¹¹² However, these pre-scripted mission assignments are designed to assist DHS and state authorities to better request military capabilities *after* the disaster has struck. This recommendation would allow USNORTHCOM to lean forward, in a more deliberate fashion, and allow them to deploy limited search and rescue, medical, or transportation capabilities based on analysis of the predicted consequences of the disaster. This recommendation may require changes to the Stafford Act, but the benefits of shaping a DoD response warrant the pursuit of any required legislative change. These “early deployers” are Tier-2 forces and would follow the same force generation principles discussed in chapter VI.

D. PERCEPTIONS AND CULTURE

The fourth recommendation is a cultural shift from “being in charge” to one of supporting. The military has created a culture of leaders who are trained to take charge and win our nation’s wars. Fighting the nation’s wars is a mission where DoD is, and will continue to be, the lead federal agency. In a DSCA operation, DoD is not only in a supporting role, they are the capability of last resort. To set the conditions for a successful federal response, the local and state authorities must succeed. In other words, if the population loses confidence in their local and state authorities, the federal response will create tension, competition, and an uncoordinated effort. DoD should avoid deploying a Joint Task Force Commander that out-ranks the state’s

¹¹² U.S. Department of Defense, Joint Director of Military Support (JDOMS), *Memorandum: Pre-scripted Mission Assignments (Rounds 1 and 2) with Adjusted Cost Factors* (Washington D.C., 1 November 2006).

Adjutant General. Further, DoD should avoid becoming the “face” of the federal response. DoD should simply, and quietly support the local and state relief effort and exit the response area after local and state capabilities are no longer overwhelmed.

E. POLITICS AND INFORMATION OPERATIONS

The final recommendation is to add two planning considerations for the DoD to incorporate into DSCA operations: politics and information operations. Military culture is an apolitical institution that serves the people through a constitutional chain-of-command. However, DSCA operations are complex in that they transcend and affect three levels of government (local, state, and federal) and the population affected by the disaster. Despite the military’s apolitical nature, their actions alone are potentially perceived differently (positively or negatively) at each level of government. The reality is, in order to preserve the apolitical character of the military response, the military must consider the ramifications that their actions, or inactions may have on the political dynamics of a relief operation that cuts through three layers of government. Incorporating the fourth recommendation, planners should begin with integrating an information operations plan that aims to prop-up the local and state response efforts and make them the face of the relief effort. Aggressively educating the public through all available media will reduce the information gap, and the military, at all levels, should embrace every opportunity to do so.

F. SUMMARY

The response bureaucracy established to support civil authorities in times of crisis and destruction will never completely satisfy all the unknown needs of the affected local and state governments, nor the population that they represent. The goal is to establish a response framework that is adaptive and responsive to the changing requirements, and flexible enough to change tack when the desired outcome becomes elusive. As Mr. Frances Townsend, Assistant to

the President for Homeland Security and Counterterrorism, stated in his cover letter introducing *The Federal Response to Hurricane Katrina: Lessons Learned*, “Despite all we do, however, Hurricane Katrina was a deadly reminder that we can and must do better, and we will. This is the first and foremost lesson we learned from the death and devastation caused by the country’s most destructive natural disaster: No matter how prepared we think we are, we must work every day to improve.”¹¹³ However, that drive to improve diminishes every day the country is removed from the last major catastrophe, and to overcome that growing complacency will take great leadership.

¹¹³ White House, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington, D.C.: White House, 2006), 1.

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